

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE***

Applicant: Leping Huang

Title: BLUETOOTH PERSONAL AREA  
NETWORK ROUTING PROTOCOL  
OPTIMIZATION USING CONNECTIVITY  
METRIC

Appl. No.: 10/606,437

Filing Date: 6/25/2003

Examiner: Christine Y. Ng

Art Unit: 2416

Confirmation 6335

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT  
UNDER 37 C.F.R. §1.705**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants are in receipt of the Notice of Allowance for the above-referenced application. Applicants disagree with the Determination of Patent Term Adjustment (PTA) under 35 U.S.C. § 154(b) and present the following facts per procedure set forth in 37 C.F.R. § 1.705(d) to support their contention that the patent term adjustment should be 183 days instead of 0 days as calculated by the United States Patent and Trademark Office (USPTO).

The Patent Office determined that the patent was entitled to 0 days of PTA. Applicants believe that this PTA determination was made in accordance with the “Explanation of 37 CFR 1.703(f) and of the United States Patent and Trademark Office Interpretation of 35 U.S.C. §154(b)(2)(A)” published at 69 Fed. Reg. 34238 (Jun. 21, 2004). Under that interpretation of the PTA statute, any PTO delay under 35 U.S.C. § 154(b)(1)(A) is deemed to overlap with any 3-year maximum pendency delay under 35 U.S.C. § 154(b)(1)(B), and so, as a practical effect, PTA may be awarded under §154(b)(1)(A) or §154(b)(1)(B), but not both.

On September 30, 2008, the United States District Court for the District of Columbia issued a decision finding that the U.S. Patent and Trademark Office's interpretation of the PTA statute is incorrect. *Wyeth v. Dudas*, Civ. Action No. 07-1492 (JR) (Sep. 30, 2008). The court determined that, under the correct interpretation of the PTA statute, periods of "overlap" are limited to "periods of time . . . [that] occur on the same day." *Wyeth*, slip op. at 8. Thus, a PTO delay under §154(b)(1)(A) overlaps with a delay under §154(b)(1)(B) only if the delays "occur on the same day." *Id.*

Applicants have recalculated PTA for the captioned patent under the court's interpretation of the PTA statute, and have determined that the patent is entitled to 183 days PTA, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702(a) and (b), and under 37 CFR §§1.703(a) and (b).

The attached sheet details the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(a) Total of non-overlapping PTO delay under §154(b)(1)(A) & (B): 428 days

(b) Total Applicant delay: 245 days

Final PTA Determination: 183 days

Applicants therefore respectfully request that the patent be accorded 183 days PTA.

The patent is not subject to a terminal disclaimer.

Payment of the requisite fee is submitted herewith. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Applicants request further that a decision on this request be deferred or delayed until a final decision has been rendered in *Wyeth v. Dudas*, which is now on appeal at the U.S. Court of Appeals for the Federal Circuit, under Federal Circuit Docket No. 2009-1120.

Respectfully submitted,

By 

Paul S. Hunter  
Attorney for Applicant  
Registration No. 44,787

Date December 23, 2009

FOLEY & LARDNER LLP  
Customer Number: 23524  
Telephone: (608) 258-4292  
Facsimile: (608) 258-4258

## Patent Term Adjustment Calculation System

Add a new event to this case

Docket Number:088245-0113  
Application Number:10/606437  
Patent Number:N/A

	Event Description	Event Date	Days from Filing	PTO Days	Applicant Days
Edit Delete	Application Filing Date	06/25/2003	0		
Edit Delete	IDS NOT falling under 1.704(c)(6), (8) or (10) filed at PTO	08/12/2003	48		
	14 month From Application date	08/25/2004	427		
Edit Delete	Non-Final Office Action	10/04/2004	467	40	
	Non-Final Office Action + 3 months	01/04/2005	559		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	04/07/2005	652		93
Edit Delete	Non-Final Office Action	06/29/2005	735		
	Non-Final Office Action + 3 months	09/29/2005	827		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	11/29/2005	888		61
Edit Delete	Non-Final Office Action	02/23/2006	974		
	Non-Final Office Action + 3 months	05/23/2006	1,063		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/24/2006	1,064		1
Edit Delete	Non-Final Office Action	06/16/2006	1,087		
	3 Year Period Starts	06/25/2006	1,096		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	08/29/2006	1,161		
Edit Delete	Final Office Action	11/09/2006	1,233		
Edit Delete	Final Office Action Response Received at PTO	01/16/2007	1,301		
	Final Office Action + 3 months	02/09/2007	1,325		
Edit Delete	Advisory Action	02/20/2007	1,336		
Edit Delete	Notice of Appeal Received at PTO	05/10/2007	1,415		
Edit Delete	Request For Continued Examination (including amendment)	07/18/2007	1,484	388	90
	3 Year Period Stopped	07/18/2007	1,484		
CLOSE WINDOW	Analyze Office Action	10/12/2007	1,570		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	01/09/2008	1,659		
Edit Delete	Non-Final Office Action	04/09/2008	1,750		
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	05/14/2008	1,785		

Edit Delete	Non-Final Office Action	06/23/2008	1,825
Edit Delete	Non-Final Office Action Letter Restarting Period for Response	06/23/2008	1,825
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	09/23/2008	1,917
Edit Delete	Final Office Action	12/16/2008	2,001
Edit Delete	Final Office Action Response Received at PTO	02/06/2009	2,053
Edit Delete	Non-Final Office Action	03/16/2009	2,091
Edit Delete	Non-Final Office Action Rsp. Rcv'd at PTO	06/10/2009	2,177
Edit Delete	Notice of Allowance	09/28/2009	2,287
	Projected Patent Grant Date	04/06/2010	2,477
		Totals:	428
		PTA:	245
			183



Version: 3.02.05

LOGIN: Linda Anderson

IP: 10.24.4.21

Foley &amp; Lardner LLP